

**FILED**

FEB 12 2007

DISCIPLINARY COMMISSION OF THE  
SUPREME COURT OF ARIZONA

**BEFORE THE DISCIPLINARY COMMISSION  
OF THE SUPREME COURT OF ARIZONA**

IN THE MATTER OF A MEMBER )  
OF THE STATE BAR OF ARIZONA, )

**RORY L. WHIPPLE,** )  
**Bar No. 014093** )

**RESPONDENT.** )

Nos. 05-1600 & 06-0163

**DISCIPLINARY COMMISSION  
REPORT**

This matter came before the Disciplinary Commission of the Supreme Court of Arizona on January 12, 2007, pursuant to Rule 58(e), Ariz. R. Sup. Ct., for consideration of the Hearing Officer's Report filed November 17, 2007, recommending acceptance of the Tender of Admissions and Agreement for Discipline by Consent (Tender) and Joint Memorandum in Support of Agreement for Discipline by Consent (Joint Memorandum), providing for censure, two years of probation with the State Bar's Member Assistance Program (MAP) to run concurrently with the Law Office Management Program (LOMAP) contract previously imposed in File No. 05-0809, and costs.

**Decision**

The eight members<sup>1</sup> considering this matter unanimously recommend rejecting the Tender and Joint Memorandum and remanding this matter to the Hearing Officer 8S for further proceedings.

**Discussion**

The Hearing Officer determined that Respondent knowingly failed to respond to the State but mitigated his lack of cooperation based on evidence of mitigating factor 9.32(c)

<sup>1</sup> Commissioner Todd did not participate in these proceedings.

1 personal and emotional problems. See Hearing Officer's Report, p. 9:14. In support of  
2 mitigating factor 93.2(c), Respondent offered evidence of his wife's car accident; however,  
3 it appears that the accident which occurred on March 23, 2006, transpired after the alleged  
4 misconduct.

5 No hearing has been held in this matter and based on the existing record, the  
6 Commission determined that the evidence in mitigation is insufficient to justify a reduction  
7 in the presumptive sanction of suspension. Respondent's misconduct in the instant matter  
8 involves conduct similar to his prior disciplinary offenses. Moreover, there is no evidence  
9 that Respondent's personal or emotional problems have been addressed or resolved.  
10 Respondent's statements at oral arguments are not part of the evidentiary record and the  
11 Disciplinary Commission has repeatedly requested that hearings be held on agreements, if  
12 only telephonic hearings, in order to establish the record and support the hearing officer's  
13 findings and conclusions.  
14

#### 15 Conclusion

16 The Disciplinary Commission determined that the current record is insufficient to  
17 support the agreed upon sanction of censure and probation, and therefore, the Tender and  
18 Joint Memorandum are unanimously rejected and this matter remanded to Hearing Officer  
19 8S for evidentiary proceedings.

20 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of February 2007.  
21

22  
23 

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25 Barbara A. Atwood, Chair  
26 Disciplinary Commission

1 Original filed with the Disciplinary Clerk  
this 12<sup>th</sup> day of February 2007.

2 Copy of the foregoing mailed  
3 this 12<sup>th</sup> day of February 2007 to:

4 Sandra Slaton  
5 Hearing Officer 8  
6 6619 North Scottsdale Road  
7 Scottsdale, AZ 85250

8 Roy L. Whipple  
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14 by Brenda Dominguez  
15 /mps